

**MINUTES OF THE  
LAND RECLAMATION COMMISSION MEETING  
LACHARRETTE/NIGHTINGALE CREEK CONFERENCE ROOM  
LEWIS AND CLARK STATE OFFICE BUILDING  
1101 RIVERSIDE DRIVE  
JEFFERSON CITY, MISSOURI  
May 23, 2013**

Chairman Jim DiPardo called the meeting to order on May 23, 2013 at 10:00 a.m., at the Department of Natural Resources, Lewis and Clark State Office Building, LaCharrette/Nightingale Creek Conference Room, located at 1101 Riverside Drive, in Jefferson City, Missouri.

**Commissioners Present:** Chairman Jim DiPardo; Dr. Gregory Haddock, Vice-Chairman; Commissioner Leslie Gertsch; Commissioner Joe Gillman; Commissioner John Madras; Commissioner Aaron Jeffries.

**Staff Present:** Kevin Mohammadi, Program Director; Lauren Cole, Bill Zeaman, Larry Slechta, Donald Cripe, Kurtis Cooper, Tucker Fredrickson, Beth Aubuchon, Ron Dumey, Sharon Thompson, Rosie Schulte, Teri Bibbs.

**Others Present:** Don Willoh, Attorney General's Office; Daren Eppley, Attorney General's Office; Van Beydler, Department of Natural Resources, Division of Environmental Quality Administration; Steve Rudloff, MLPA; John Kelly, Private Landowner; Linda Kelly, Private Landowner; Liesl Snyder, AA Hwy Health & Safety Coalition; Robert Snyder, AA Hwy Health & Safety Coalition; Lorri Adams, AA Hwy Health & Safety Coalition; LeeAnn Hamilton, AA Hwy Health & Safety Coalition; Jim Martin, AA Hwy Health & Safety Coalition; Laurie Martin, AA Hwy Health & Safety Coalition; David Earls, AA Hwy Health & Safety Coalition; Edward Earls, AA Hwy Health & Safety Coalition; Gary Shaver, Quality Structures; Angela Wood, Quality Structures; Dale Mangrum, Wilderness Club RV Resort; Edie Mangrum, Wilderness Club RV Resort; Julie & Jerry Ritze, Wilderness Club RV Resort; Robert Radamacher, AA Quarry, LLC; Steve Ruprecht, AA Quarry, LLC; Jimmy Gibson, Politte Ready Mix LLC; Teresa Schubert; Jenny Frazier, Missouri Department of Conservation; Cindy Davies, Department of Natural Resources, Southwest Regional Office; Bob Clay, Department of Natural Resources, Water Resources Center, Dam Reservoir and Safety Program.

**Election of Officers for the Commission**

**Agenda Item #2**

Commissioner Gertsch nominated Jim DiPardo for the chairman of the Commission for the next year. Commissioner Haddock seconded the motion. The motion passed unanimously.

Chairman DiPardo nominated Commissioner Haddock as vice-chairman. Commissioner Madras seconded the motion. The motion passed unanimously.

**Approval of March 28, 2013 Commission Meeting Minutes**

**Agenda Item #3**

Commissioner Haddock made a motion to approve the March 28, 2013, Meeting Minutes as written. Commissioner Gertsch seconded the motion. The motion passed unanimously.

**Resolution**

**Agenda Item #4**

This item was postponed to later in the meeting. Following one of the speakers in the AA Quarry Request for a Hearing, Missouri Department of Natural Resources Director Sara Parker Pauley presented Jenny Frazier, former legal counsel for the Land Reclamation Commission, with a Resolution for her work with the Commission.

**Agenda Item #5**

Kevin Mohammadi, Staff Director, presented a Resolution to Teresa Schubert. Ms. Schubert served the Land Reclamation Program as a Senior Office Support Assistant for almost 8 years.

**INDUSTRIAL MINERALS**

**Request for Hearing – AA Quarry, LLC**

**Agenda Item #6**

Tucker Fredrickson, Land Reclamation Program staff, presented the Commission with information regarding the AA Quarry, LLC application for a 214 acre mine site. After the application was deemed complete by Land Reclamation Program staff, during the comment period the Staff Director did receive comments from the public and requests for an informal public meeting, which was held March 7, 2013, and eventually the Staff Director received requests for a hearing. On April 2, 2013, the Staff Director did provide everyone who had written in with a letter along with the Staff Director's Recommendation and Attachment 1, informing them of the location, date, time and how to prepare for the Commission meeting.

There were questions from the Commissioners regarding the location of AA highway in relation to the mine plan and the area of the current permit application.

David Earls spoke on behalf of himself and his son, Edward Earls. Mr. Edward Earls has non-verbal Down Syndrome and is cared for by Mr. David Earls. They live about 7/10 of a mile from the proposed quarry site and 300 feet from AA Highway. Mr. D. Earls thanked the Commission, Mr. Bill Zeaman, and Mr. Kevin Mohammadi for their guidance and the opportunity to address the Commission. Mr. D. Earls requested that the Commission deny the permit because the permit would unduly impair Mr. E. Earls and in turn him. In the absence of denial, Mr. D. Earls requested the Commission recognize him and his son as petitioners of standing at a formal public hearing. Mr. D. Earls presented the Commission with documents for the record. The first letter was from Marie Delcambre, M.D., dated February 20, 2013. Dr. Delcambre has been Mr. E. Earls' physician since 2007, and she indicates Mr. E. Earls is best served by remaining at home in a quiet environment. The second letter is from Marie Delcambre, M.D., dated March 23, 2009 (was stated to be dated March 27, 2009). This letter notes the severity of Mr. E. Earls' impairments and briefly assesses the quality of care he was receiving at that time. The third letter is from Ms. Lori Oxborough, Program Director at

Developing Potential, Incorporated (DPI) dated May 1, 2013. DPI is an adult daycare center for the developmentally disabled in which Mr. E. Earls was enrolled from 2006 through 2008, at which time DPI determined Mr. E. Earls was “no longer a match for programming” due to safety concerns. The fourth submission is a letter from Mr. D. Earls to Mr. Kevin Mohammadi, Program Director, detailing the daily care he provides to Mr. E. Earls. Mr. D. Earls stated that Mr. E. Earls’ medical doctor identifies him as a non-candidate for sedative medication due to his inability to report potential lethal side effects because he is non-verbal. Mr. D. Earls further stated that Mr. E. Earls’ dismissal from DPI makes him a non-candidate for care outside the home, and therefore his needs are best met in the home. Mr. D. Earls stated that AA Quarry would disrupt the tranquil environment that has allowed Mr. E. Earls to exhibit progressive behaviors since being cared for in the home, and his livelihood will be impacted. Mr. D. Earls explained that Mr. E. Earls’ daily schedule will become unpredictable when the peaceful environment is disrupted and Mr. D. Earls’ livelihood becomes even more difficult. Commissioner Haddock questioned Mr. D. Earls about the qualifications or expertise in being able to make a recommendation of Ms. Lori Oxborough, Program Director of DPI. Mr. D. Earls stated the organization has been providing services for 20 years and that he did not know her exact educational background, but it was a staff decision.

LeAnn Hamilton spoke next regarding the AA Quarry. Ms. Hamilton and her husband, Mr. Jess Hamilton, were at the Commission meeting to express their opposition to the proposed AA Quarry and ask that the permit be denied. The Hamilton property abuts the north section of the proposed quarry. Ms. Hamilton stated that they are expressing issues today regarding health, safety, and livelihood. Ms. Hamilton stated that upon further reading of the minutes of the public meeting, it was established that according to 10 CSR 40-1080 (2) that they must first establish standing before the Commission and that the impact to health, safety, and livelihood must be within the authority of any environmental law or regulation administered by the Missouri Department of Natural Resources. Also noted was the statement that the petitioner’s testimony will be the determining factor for the Commission to make the final decision. Ms. Hamilton stated that in the 10 years of decisions they looked back on, the Commission did not deny any permits on the grounds of health, safety, and livelihood. Ms. Hamilton stated that they have asked for the criteria used to make these determinations but have not been given any. Ms. Hamilton further explained that they have been asked to submit statements from physicians to the extent their health and safety will be severely compromised and they have done so in good faith. Ms. Hamilton explained that she is a retired registered nurse who obtained her degree in Kansas City and practiced at Truman Medical Center for over 16 years. She also explained that her husband is a retired Oral and Maxillofacial surgeon with over 30 years of practice in his field. Ms. Hamilton stated that both she and her husband spent many years obtaining education and specialization in their respective professions and maintained licenses to practice medicine as required by state boards. Ms. Hamilton stated that Black’s Law Dictionary defines the practice of medicine as the treatment of injuries as well as the discovery of the cause and nature of disease, and the administration of remedies or the prescribing of treatment therefore. Ms. Hamilton explained that she had read the qualifications of each of the Commissioners as listed on the website and that although experts in their field, there was no evidence of medical knowledge, education, or practice; however, they make judgments concerning the health and safety of people throughout the state. Ms. Hamilton further stated that the Commissioner’s expertise in dealing with patients with developmental disabilities such as Mr. Earls’ son is non-

existent. Ms. Hamilton declared that when the Commission denies an individual standing related to his or her medical issues and recommendations and documentations of their personal physicians, they are basically practicing medicine without a license. Ms. Hamilton stated she, along with many of her neighbors, is seeking to stop the issuance of the permit due to the negative impact it will have on the community and health and safety issues. Ms. Hamilton acknowledged that Mr. Radmacher has completed the necessary permit paperwork and met the requirements before the Commission. Ms. Hamilton explained that she and other members of the community are now requesting to be granted status as petitioners of standing. Ms. Hamilton requested the Commissioners listen to their concerns and be guided by the medical experts' opinions.

Ms. Hamilton also spoke on behalf of Scott Gard, who wished to request denial of the permit and be considered a petitioner of standing at a formal public hearing. Mr. Gard lives within one mile of the proposed quarry. Ms. Hamilton read a letter from Mr. Gard in which he stated that he had attended the public meeting for AA Quarry at which he verbally read and submitted progress notes from the VA Hospital in Kansas City, MO and requested that the status of his medical condition be read at the request for a hearing. Mr. Gard also requested that the Commission delay a decision on the permit until the Missouri Department of Natural Resources is able to provide definitions of health, safety, and livelihood. Ms. Hamilton explained that Mr. Gard is a Vietnam Veteran and is receiving treatment at the Kansas City VA Hospital for anxiety and depression and one of Mr. Gard's symptoms according to the Progress Notes submitted is an easily triggered startle response, which increases his anxiety. The Progress Notes further state that external noises will likely increase his anxiety. The Commission asked the Program, since Mr. Gard was requesting to be listed a petitioner of standing, if he had already contacted them and requested a hearing, and the Program Director responded that Mr. Gard had indeed. Ms. Hamilton was also asked by the Commission for clarification of the location of her home on the map shown during the presentation.

Agenda Item #4 was presented at this time.

The next speaker opposing the issuance of a permit for AA Quarry was Liesl Snyder. Ms. Snyder feels that the community is suffering from a lack of security and equality due to actions or inactions of government and elected officials in this situation. Ms. Snyder stated there are approximately 204 homes within a one mile radius and 7,869 people in a five mile radius. Ms. Snyder said that it appears efforts were made to conceal the operation from the community. Ms. Snyder stated that she felt AA Quarry had intentionally set back the mine plan boundary by 100 feet so they legally wouldn't have to notify people bordering the property. Ms. Snyder also commented that required signs were either not posted, or were posted so they weren't visible from a public road, to keep people from finding out about the proposed quarry. Ms. Snyder talked about the research she did regarding laws overseeing quarry operations. She said health, safety, and livelihood were not defined anywhere, nor was there anything about the impact a quarry would have on the community of people living around it. Ms. Snyder explained they had attempted to contact many local officials, but were told there was nothing they could do. Ms. Snyder requested the permit application be denied due to the fact that the people have not had equal and adequate representation under the law in consideration of the unique concerns of health, safety, and livelihood that exist within the community. Ms. Snyder also requested to be

granted status as a petitioner of standing. Commissioner Gertsch asked which specific aspects of Ms. Snyder's health, safety, and livelihood would be affected, since she was asking to be a petitioner of standing. Ms. Snyder responded that she has an anxiety disorder that is aggravated by travelling roads with these large trucks due to the narrowness of the road, the noise of the quarry, and the blasting.

Robert Snyder was the next speaker to address the Commission. Mr. Snyder explained he went through the rules and statutes relating to rock quarries and compared them to AA Quarry. He stated there was no sign at the entrance of AA Quarry from AA Highway. Mr. Snyder stated that public notification must be posted at the primary point of access to the permit area; not posting the sign at this location is a violation of 10 CSR 40-10.050.11. Mr. Snyder feels this was an effort to keep the community from knowing what was going on at the location. Mr. Snyder explained that they had done air photography to find out more about what was happening at the site. Mr. Snyder stated that they found a 40 acre land disturbance and a huge dam. Mr. Snyder explained that he knew they were permitted for 9 ½ acres for a land disturbance, so he contacted the Department of Natural Resources' Regional Office who told him that it was farmland and not regulated under the permit, and was told the same thing about the dam - Mr. Radmacher could do what he wanted with it. Mr. Snyder explained that Mr. Radmacher failed to contact the Army Corps of Engineers prior to constructing the dam, resulting in a 404 violation, but Mr. Radmacher still benefits as he will most likely be able to keep the dam. Mr. Snyder spoke with Mr. Bill Zeaman, Land Reclamation Program, following the issuance of the 404 violation. Mr. Snyder stated that he and Mr. Zeaman agreed all parties needed to know the outcome of that investigation before the permitting process went any further. Mr. Snyder explained that he contacted the Army Corps of Engineers, who could not comment due to the ongoing investigation. Mr. Snyder made a Freedom of Information Act request to the Corps of Engineers, and received a response detailing information that was considered confidential or was unavailable at that time. Mr. Snyder also discovered that all dams 35 feet and higher are regulated by the Missouri Department of Natural Resources Dam and Reservoir Safety Program. Mr. Snyder stated that he contacted Dam Safety Enforcement about the dam, which he believed to be over 35 feet. Mr. Snyder stated that about a week after he made the report, a neighbor emailed him pictures of the dam being lowered. Mr. Snyder then forwarded this email to the inspector he spoke with previously. Mr. Snyder explained that all the violations had been reported by citizens, and not by the Department of Natural Resources. Mr. Snyder does not feel that the Department of Natural Resources has the resources to adequately protect the health and safety of its community, and therefore requests denial of the permit. Mr. Snyder also requested to be a petitioner of standing and requested a formal hearing if the permit is not denied. Commissioner Gertsch asked Mr. Snyder what aspect specifically unduly impacts his health, safety, and livelihood. Mr. Snyder answered that it is hard to say, since he can't find a definition but in his own opinion he is affected just knowing it's there - not sleeping, not eating, and not doing the work through the day.

Laurie Martin was the next speaker opposing the issuance of a permit for AA Quarry. Ms. Martin stated that their property borders the property AA Quarry is located on. Ms. Martin spoke about the economic impact the quarry would have on the property in the community. Ms. Martin stated that the presence of the quarry would decrease the value of the neighboring property. This in turn would decrease tax revenues and impact the area schools. Ms. Martin also

stated that damage caused by blasting from the quarry is not covered by insurance, and is not even an option to purchase. Ms. Martin requested the Commission deny the permit based on these factors and requested status as a petitioner of standing at a formal public hearing. Commissioner Gertsch asked Ms. Martin the same question she asked the previous speakers, of how this affected her health, safety, and livelihood. Ms. Martin explained that her home's value, livelihood, was her main concern.

The final speaker opposing AA Quarry was Lorri Adams. Ms. Adams requested the Commission deny the permit and also requested to be granted status as a petitioner of standing at a formal hearing if it is deemed necessary. Ms. Adams explained that her primary concerns are safety and road impact issues that will result from the operation of this quarry. Ms. Adams stated that she understands the Department of Natural Resources does not regulate trucks, but the approval of the permit has direct consequences. Ms. Adams told the Commission that this is the wrong place for a quarry because the roads can't safely serve the truck traffic. Ms. Adams expressed concerns regarding the AA Highway and Highway 50 intersection, and presented the Commission with figures regarding reaction time and breaking distance for vehicles in this intersection. Ms. Adams also expressed the concern that AA Highway does not have shoulders and is not wide enough for the trucks, particularly when meeting a school bus. Finally, Ms. Adams expressed concern over the 117 access points, mainly driveways, on AA Highway that create many blind spots on AA Highway. Ms. Adams stated that she is a business owner and works from home. She explained that there is a constant cowbell, sometimes from 7 a.m. to 7 p.m., which has caused her to move some of her work to her sister's home in Kansas City because of the noise level interrupting webinars she gives.

Steve Ruprecht, attorney for AA Quarry, addressed the Commission regarding the requests for standing for a hearing. Mr. Ruprecht stated standing is developed by determining whether there is scientific competent substantial evidence of harm to health and welfare and safety of individuals. Mr. Ruprecht said he could appreciate the frustrations expressed, but the issues presented were attacks on the process that need to be addressed in legislature and changes in laws, not at the current meeting. Mr. Ruprecht stated that he did not feel anything he heard met the exception rule of scientific competent substantial evidence; the closest would be the first speaker who presented letters from doctors stating his son's condition and that he was best cared for in the home, but there was no evidence of nexus or connection to the operation of the quarry. Mr. Ruprecht also noted that Mr. Radmacher is in the process of working with the Corps of Engineers to get that issue resolved and the dam issue has already been resolved.

Robert Radmacher, AA Quarry operator, stated to the Commission that he is working with MoDOT on the intersection that was mentioned previously to add an acceleration lane, pending the decision of the Commission. Mr. Radmacher also responded to a question from the Commission regarding current mining on the property that they are not doing any mining on the property.

Commissioner Gertsch made a motion to move to closed session under 610.021.1 to discuss legal issues with counsel. Commissioner Haddock seconded the motion.

Commissioner Gertsch: yes  
Commissioner Madras: yes  
Commissioner Gillman: yes  
Commissioner Jeffries: yes  
Commissioner Haddock: yes  
Chairman DiPardo: yes

The motion passed with 6 yes votes.

The Commission met in closed session and returned to open session at 11:52.

Commissioner Gillman made a motion that in the matter of AA Quarry, LLC's new site permit application that the Commission grant a formal public hearing under 10 CSR 40-10.080. Commissioner Haddock seconded the motion.

Commissioner Madras: yes  
Commissioner Gillman: yes  
Commissioner Jeffries: yes  
Commissioner Gertsch: yes  
Commissioner Haddock: yes  
Chairman DiPardo: yes

The motion passed with 6 yes votes.

### **Request for Hearing – Politte Ready Mix, LLC**

#### **Agenda Item #7**

Don Cripe, Land Reclamation Program staff, presented the Commission with background information in regard to the formal request for a hearing in the matter of the transfer application from Jim Mills to Politte Ready Mix in Reynolds County. Mr. Cripe explained that the Program originally received an application to transfer five sites in February 2013, but that was changed to four sites when the application was deemed complete. Mr. Cripe stated that the appropriate public notice had been published in the local newspaper and certified mail had been sent to the necessary landowners. Mr. Cripe stated that one letter was received in opposition of the transfer. He further stated that there was no request for an informal public meeting, but there was a request for a formal public hearing. Mr. Cripe stated there was a pre-transfer inspection of the sites which found evidence of bank erosion. Mr. Cripe explained that there were complaints from the petitioners, Mr. and Mrs. John Kelly, about the previous company mining on their property. Mr. Cripe asked the Commission to make the determination if the petitioners have standing to grant a hearing.

Chairman DiPardo asked Mr. Cripe about evidence of mining, and Mr. Cripe responded that the area had been mined by Jeremiah Miller under the Jim Mills, Inc. permit but the question is where the property line lies. There were then questions from the Commission about the scale of the map shown.

Linda and John Kelly spoke to the Commission in opposition of the transfer of permit 0894 and to establish standing as a petitioner at a formal hearing. Mr. Kelly stated that they had a survey completed that proved their land had been trespassed on. Mr. Kelly stated that they had lost at least two acres of land due to the increased flow of the creek. Ms. Kelly covered four reasons they felt the permit should be revoked and not transferred. The first reason Ms. Kelly felt the permit should be revoked and not transferred was because it did not meet the requirements of application. According to Ms. Kelly, they did not receive the required letter as notice when the permit was deemed complete in 2002. Ms. Kelly's second reason was that the permit holder is a habitual violator. Ms. Kelly stated that two official inspections had taken place in Section 35 and the permittee had built levees which were removed immediately before the inspections and placed back immediately after the inspections. The second inspection was completed by Mr. Tucker Fredrickson of the Land Reclamation Program. In his report, Mr. Fredrickson stated that there was a very small stockpile of gravel left over at the end of the workday, which Mr. Miller had responded would be hauled off by the end of each workday. Ms. Kelly explained that this statement proved Mr. Miller knew there was to be no stockpile of gravel at the end of the workday, yet within one week another levee was built following this inspection. Ms. Kelly stated they contacted Lewis Clarke with the Corps of Engineers for weeks before receiving a response from Mr. Clarke that Jeremiah [Miller] would cut a few openings in that levee to relieve potential diversion concerns. Ms. Kelly stated this proved Mr. Clarke was aware that a levee existed. The third reason Ms. Kelly gave for requesting the permit be revoked was the environmental effects to Logan Creek. The fourth reason given by Ms. Kelly for the request was the fact that they do not want Mills, Inc. released of their liability. Mr. Kelly discussed the levees' impact and the multiple attempts to contact the Corps of Engineers to have them removed. Ms. Kelly discussed effects of the mining upstream of their property and the fact that they were told by Mr. Mohammadi that Logan Creek is a highly unstable stream that is not in equilibrium; Ms. Kelly wondered why mining would be allowed in such a stream. Mr. Kelly made the statement that mining was being done on their property and that their property had been trespassed on, and that he and Ms. Kelly paid to have a professional survey done which proves this. Ms. Kelly discussed the loss of income from their home as a bed and breakfast, harvesting of trees, and from hay being destroyed as well as the potential loss of their home due to a change in the flood plain from the mining. Mr. Kelly noted that the Commission has the power to require Mills, Inc. repair the damage they have done, and asked that they please do so. Ms. Kelly stated that protecting the banks from further damage and restoring trees is not sufficient to satisfy the loss incurred. She stated that they need to be reimbursed from the tonnage of gravel removed from their property illegally.

Chairman DiPardo asked if this had been going on since 2002, and Mr. and Mrs. Kelly responded that it had been. Staff Director Mohammadi explained that the survey had just been completed, and the inspectors did not have that survey when they completed the previous inspection to know if mining had been occurring on the Kelly's property. There was discussion among the Commissioners and the Kellys about the location of the flood plain on the property. Mr. Kelly responded that they had lost about 10 acres of the hay field and answered additional questions from the Commissioners.

Jimmy Gibson, Politte Ready Mix, addressed the Commission. Mr. Gibson explained that they recently purchased the business and sent in the request for the permit transfer and found out there



was an issue with Section 35 and dropped it from the request. Mr. Gibson also mentioned that he has an agreement with the previous owner regarding issues that arose before the transfer. There was discussion among the Commissioners and the Program regarding the fact that Section 35 was not being transferred at this time to Politte Ready Mix. The active permit for that site has expired but does have the possibility of being re-issued under Jim Mills, Inc. The Kellys said they are concerned about anything upstream because they had been told upstream mining could damage their property. Commissioner Gillman made a comment that the transfer of the particular permits in question was not germane to the information provided today because it is all related to Section 35 which is not included in the transfer. Commissioner Jeffries questioned if there had been any compliance issues with the sites that were included in the transfer at this time; the response from the Program was that there were no issues at the inspection and three of the sites were dry at the time. There were additional questions relating to bank stabilization efforts performed by other landowners.

A motion was made by Commissioner Madras that the Commission deny the hearing request based on the transfer of the permits for four sites and that Program staff conduct an investigation of the last site that is not proposed to be permitted and operated. Commissioner Haddock seconded the motion.

Point of discussion: Commissioner Haddock clarified that the transfers for four sites would not be tied to the investigation; the transfers would still take place. Commissioner Haddock also questioned if the Program could be put in a situation where they would provide evidence and resolve the situation of restoring banks, etc., and they wouldn't have any leverage without holding out on the other four site applications. Commissioner Madras stated that he wouldn't view this as something that would be used by private parties. There was additional discussion about the motion that was made by Commissioner Madras.

Commissioner Madras withdrew his motion.

Commissioner Madras made a motion that the Commission stay the decision until July after they receive a report from the Program. Commissioner Haddock seconded the motion.

Point of discussion: Commissioner Jeffries stated that the fifth site that is not included in the transfer is not relevant to transferring the permit and therefore he saw no reason to hold off until July to make a decision on the four sites applied for. Chairman DiPardo asked if it had to wait until July or if Program staff could go down in a week or so and investigate the matter. Director Mohammadi stated that the Program could do that. Chairman DiPardo commented that because the previous operator is an employee of the new company, they are tied together.

An amended motion was made by Commissioner Madras to stay the decision until the Program can make an investigation and get back to the Commission for a meeting at the earliest convenience and the Commission take action.

Commissioner Gertsch: yes

Commissioner Madras: yes

Commissioner Gillman: no

Commissioner Jeffries: no  
Commissioner Haddock: yes  
Chairman DiPardo: yes

The motion passed with 4 yes and 2 no votes with the staff looking into this and getting back with the Commission in a reasonable amount of time.

### **Request for Hearing – Gary Shaver**

#### **Agenda Item #8**

Bill Zeaman presented background information on this issue to the Commission. Mr. Zeaman stated that Director Mohammadi denied an expansion application from Mr. Gary Shaver. Mr. Shaver then had 15 days to request a hearing. Mr. Zeaman explained that he is automatically granted a hearing, which by law must be granted. The hearing can be before the Commission, the Chairman of the Commission may designate a member as hearing officer, or may appoint a member of the bar in good standing as hearing officer to hold the hearing and make a recommendation. Staff requested the Commission make a decision about who should hold the hearing.

Dale Mangrum, president of the Wilderness Club RV Park Homeowners Association, spoke to the Commission in opposition of the Gary Shaver expansion application. Mr. Mangrum clarified that the Wilderness Club RV Park is not actually an RV park, but a 55+ retirement community of mainly permanent residences. Mr. Mangrum explained that they oppose the expansion because of numerous violations by the applicant and concerns that those violations will continue. Mr. Mangrum explained that they are directly attached on the west side of the property.

Gary Shaver addressed the Commission on his own behalf. Mr. Shaver stated that the Wilderness Club has fought him from the beginning and it wouldn't matter what he was doing and that they are upset they didn't get what they wanted. Mr. Shaver stated that the Deputy Attorney General asked him to apply for the expansion so Mr. Shaver would be farther away from those people to help stop some of the complaints. Mr. Shaver explained that when he started he didn't actually want to mine; he was just developing the land. Mr. Shaver stated that he tried to follow the laws the best he could and rectify any issues that were raised. Mr. Shaver questioned why the burning that was not in the permitted area was an issue. He also explained that MSHA came and outlined where he was in order to help him become a mine, since he needed to be permitted for what he was doing. Don Willoh, legal counsel, addressed Mr. Shaver to ask him if he was interested in working with the Department to reach an agreement, rather than having a formal public hearing. Mr. Shaver responded that he would be interested, and that he didn't realize that was an option. The Commission asked at what point Mr. Shaver could withdraw his request for a hearing. Mr. Willoh stated that his understanding was that Mr. Shaver would like to keep his request for a hearing alive if it has to go to that, but table that to give him an opportunity to meet with the Department and Mr. Shaver confirmed that was correct. Commissioner Haddock stated to Mr. Shaver that they had been informed it took over a year to serve him from the Attorney General's Office, and asked why it had taken so long. Mr. Shaver responded that he didn't know why it had taken that long; he has been in business since 1990 and has had the same cell phone number. He also stated that he has met with the Department at the site no less than 24 times and that he is in the area constantly other than a 2-week vacation each

year. Mr. Shaver also stated his contact information, including his mailing address, physical address, and cell phone number.

A motion was made by Commissioner Haddock to table the hearing request to the next meeting at the request of Mr. Shaver. Commissioner Madras seconded the motion. A roll call vote was taken.

Commissioner Madras: yes  
Commissioner Gillman: yes  
Commissioner Jeffries: yes  
Commissioner Gertsch: yes  
Commissioner Haddock: yes  
Chairman DiPardo: yes

The motion passed with 6 yes votes.

Chairman DiPardo clarified that Mr. Shaver will meet with Land Reclamation Program Staff to try to get things worked out and the Program will come back before the Commission after meeting with Mr. Shaver. Director Mohammadi stated that the Program would meet with Mr. Shaver and attempt to come up with a Consent Judgment entered by the court.

#### **Formal Complaint – Russell Cook**

##### **Agenda Item #9**

Kurtis Cooper, Land Reclamation Program staff, presented to the Commission a request for issuance of Formal Complaint 2725 to Russell Cook. The permit for Russell Cook expired August 6, 2012. Four letters were sent to Russell Cook, with the final letter giving a deadline of November 30, 2012 to respond. No response was received. A subsequent phone conversation with Mr. Cook revealed that Mr. Cook has filed for bankruptcy and claimed to have no money for his permit. A phone call to Ozark Mountain Bank, the holder of the Certificate of Deposit for Russell Cook, revealed that Mr. Cook had cashed in the CD and therefore did not have adequate bonding. Chairman DiPardo asked if there had been any contact with Mr. Cook since the phone call, and staff responded that there had not. Chairman DiPardo asked to those in attendance if Mr. Cook was there, and there was no response.

Commissioner Haddock made a motion that a formal complaint be issued, number 2725, to Russell Cook for failure to renew permit number 1026 for the 2012 permit year, failure to submit an annual reclamation status report for the 2011 permit year, and failure to maintain adequate bonding as required by the Land Reclamation Act. Commissioner Gertsch seconded the motion. The motion passed unanimously.

#### **Formal Complaint – Bowling Sand and Gravel**

##### **Agenda Item #10**

Don Cripe, Land Reclamation Program staff, presented to the Commission a request for issuance of Formal Complaint 2726 to Bowling Sand and Gravel. The permit was for an open-pit sand and gravel site issued originally on November 13, 2000 in Stoddard County with an \$8,000 irrevocable Letter of Credit. Numerous attempts were made by the Land Reclamation Program

to contact Bowling Sand and Gravel following expiration of the permit in November 2010, explaining that this was the first step of the Conference, Conciliation, and Persuasion process and the Land Reclamation Program wants to get him back into compliance and renew the permit. A Notice of Violation was issued May 21, 2012, for failure to renew a permit, failure to maintain financial assurance, and failure to provide annual reclamation status reports. Following issuance of the Notice of Violation, Mr. Bowling called and informed staff that reclamation would begin shortly and be complete by the end of summer. The violations were put on hold at that time pending the outcome of the reclamation work. An inspection was conducted in November of 2012 and staff determined no reclamation had been started let alone completed. The violations were then reissued on March 13, 2013. On March 25, 2013 the Land Reclamation Program received a check from Mr. Bowling for all back permit fees but no application. A final demand letter was sent outlining the deficiencies. On May 9, 2013 the Land Reclamation Program received the permit renewal forms and the permit was issued for reclamation status only at the landowner's request, because they no longer wanted him on the property for anything except reclamation. The Conference, Conciliation, and Persuasion process has been futile and it is the Staff Director's position that these events constitute grounds, under the provision on 444.787.2 RSMo, for the Staff Director to seek permit revocation and forfeiture of the bond if the operator fails to take action as outlined in the formal complaint.

Commissioner Gertsch made a motion to issue Formal Complaint 2726 to Bowling Sand and Gravel for failure to renew permit #0847 for the 2012 permit year, failure to submit an Annual Reclamation Status Report for the 2011 and 2012 permit years and failure to maintain adequate bonding as required by the Land Reclamation Act. Commissioner Haddock seconded the motion. The motion passed unanimously.

### **Summary of Industrial Mineral Bond Release Requests**

#### **Agenda Item #11**

This item was not covered due to the time.

### **INTRODUCTION OF NEW STAFF**

#### **Beth Aubuchon**

##### **Agenda Item #12**

Bill Zeaman, Non-Coal Unit Chief, introduced Beth Aubuchon to the Commission. Beth has been with the Land Reclamation Program since January 14, 2013. She most recently worked with the Missouri Department of Natural Resources' Asbestos Unit of the Air Pollution Control Program. Beth has already attended over 90 inspections with certified inspectors and will hopefully be certified by mid-June. The Commission welcomed Beth to the Land Reclamation Program.

#### **Sharon Thompson**

##### **Agenda Item #13**

Mr. Ron Dumey, Administrative Unit Chief, introduced Sharon Thompson to the Commission. She is the new Senior Office Support Assistant replacing Teresa Schubert who recently retired. The Commission welcomed Sharon to the Land Reclamation Program.

## **PROJECTS AND INSPECTION UNIT**

### **Responsibility Release Request**

#### **Agenda Item #14**

Gene Noe, Land Reclamation Program staff, presented requests for release of liability of reclaimed land for various Missouri Mining, Inc. sites in Putnam County.

The first site presented is known as pit 12 and is owned by Mr. Larry Kendall. Commissioner Gertsch made a motion to release responsibility of Missouri Mining Inc., Pit 12, currently owned by Mr. Kendall. Commissioner Haddock seconded the motion. The motion passed unanimously.

The second site presented was pit 9X reclaimed by the same company and is located in the same county. The landowners have all been notified of the release and approve of the release contingent on minor work getting done later. Commissioner Haddock made a motion that the Land Reclamation Commission release pit 9X, permit 79-25-A2, that it would have no further reclamation or no further funds be expended on this area. Commissioner Gertsch seconded the motion. The motion passed unanimously.

The final site presented was Missouri Mining Pit 8A which is owned by Mr. Tom Rowland, Mr. Dave Hoerner, and Mr. Gary Mundshenk. A small area where the haul road was lost due to heavy rainfall was not included in the request for responsibility release at this time. A motion was made by Commissioner Gertsch to release responsibility for permits 1982-30, 78-25-A2, and 77-25-A1 for Missouri Mining, Inc. pit 8A. Commissioner Haddock seconded the motion. The motion passed unanimously.

## **OTHER BUSINESS**

### **Approval of Findings of Necessity for Rulemaking**

#### **Agenda Item #15**

Kevin Mohammadi, Program Director, presented to the Commission a request for approval of Findings of Necessity for Rulemaking, as statutorily required, in regards to changes in coal regulations necessary for the state to retain primacy. The changes include ownership and control of mining company. In addition, the penalty will increase from \$750 to \$1,025. The rules include 10 CSR 40-6.030, 10 CSR 40-6.070, 10 CSR 40-6.100, 10 CSR 40-8.030, 10 CSR 40-8.040.

Commissioner Jeffries made a motion that the Program move forward with rule amendments by the signing of the Finding of Necessity. Commissioner Haddock seconded the motion. The motion passed unanimously.

**CLOSED SESSION**

Commissioner Gillman made a motion that the Land Reclamation Commission meet in Closed Session on July 25, 2013, prior to an open meeting for the purpose of discussing personnel actions, legal actions, causes of actions or litigation as provided in Section 610.021 RSMo, 2003. Commissioner Jeffries seconded the motion. The motion passed unanimously.

**ADJOURNMENT OF MEETING**

Commissioner Haddock made a motion to adjourn the meeting. Commissioner Gertsch seconded the motion. The motion passed unanimously.

The Meeting adjourned at 3:24 p.m.

Respectfully submitted,

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Chairman